

MARK STEGER SMITH
Assistant U.S. Attorney
U.S. Attorney's Office
2601 Second Avenue North, Suite 3200
Billings, MT 59101
Ph: (406) 247-4667; Fax: (406) 657-6058
mark.smith3@usdoj.gov

JEAN E. WILLIAMS, Deputy Assistant Attorney General
United States Department of Justice
Environment and Natural Resources Division
SETH M. BARSKY, Section Chief
BRIDGET KENNEDY McNEIL (CO Bar 34299)
Wildlife and Marine Resources Section
LUTHER L. HAJEK (CO Bar 44303)
Natural Resources Section
999 18th St., South Terrace, Suite 370
Denver, CO 80202
Ph: (303) 844-1484, (303) 844-1376; Fax: (303) 844-1350
bridget.mcneil@usdoj.gov
luke.hajek@usdoj.gov

Attorneys for Federal Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

INDIGENOUS ENVIRONMENTAL NETWORK, <i>et al.</i> , and NORTHERN PLAINS RESOURCE COUNCIL, <i>et al.</i> , Plaintiffs, v.	CV 17-29-GF-BMM CV 17-31-GF-BMM Consolidated FEDERAL DEFENDANTS' STATEMENT REGARDING THE HEARING ON DEFENDANT- INTERVENORS' MOTION FOR STAY PENDING APPEAL
--	--

UNITED STATES DEPARTMENT OF STATE, <i>et al.</i> ,	
---	--

Defendants, and	
--------------------	--

TRANSCANADA CORPORATION, <i>et al.</i> ,	
--	--

Defendant-Intervenors.	
------------------------	--

Federal Defendants hereby provide the following statement regarding the January 14, 2019 hearing scheduled on Defendant-Intervenors' Motion for a Stay Pending Appeal.

1. At the end of the day on December 21, 2018, the appropriations act that had been funding the Department of Justice expired and appropriations to the Department lapsed. The same is true for several other Executive agencies, including the Federal Defendants in this case. The Department does not know when funding will be restored by Congress.

2. Absent an appropriation, Department of Justice attorneys and employees of the Federal Defendants are prohibited from working, even on a voluntary basis, except in very limited circumstances, including "emergencies involving the safety of human life or the protection of property." 31 U.S.C. § 1342.

3. As represented in Defendant-Intervenors' motion, Federal Defendants

do not oppose the motion for a stay pending appeal.

4. Under the circumstances summarized above, Federal Defendants do not believe our participation at the January 14, 2019 hearing is necessary and do not object to the hearing proceeding without Department counsel present.¹

Respectfully submitted this 7th day of January, 2019,

JEAN E. WILLIAMS
Deputy Assistant Attorney General
United States Department of Justice
Environment and Natural Resources Division

SETH M. BARSKY, Section Chief

/s/ Bridget K. McNeil
BRIDGET KENNEDY McNEIL (CO Bar 34299)
Senior Trial Attorney
Wildlife and Marine Resources Section
999 18th St., South Terrace, Suite 370
Denver, CO 80202
Ph: (303) 844-1484; Fax: (303) 844-1350
bridget.mcneil@usdoj.gov

/s/ Luther L. Hajek
LUTHER L. HAJEK (CO Bar 44303)
Trial Attorney
Natural Resources Section

¹ If the Court disagrees, the Department of Justice is required to request a stay of the hearing until Congress has restored appropriations to the Department and Federal Defendants. Federal Defendants will file a motion to that effect, if the Court requires. Alternatively, if the Court requires the participation of Department counsel and is not inclined to stay the hearing date, the Department of Justice respectfully requests permission to appear telephonically at the January 14, 2019 hearing.

999 18th Street, South Terrace, Suite 370
Denver, CO 80202
Ph: (303) 844-1376; Fax: (303) 844-1350
luke.hajek@usdoj.gov

Attorneys for Federal Defendants

CERTIFICATE OF SERVICE

I hereby certify that on January 7, 2019, a copy of the foregoing Federal Defendants' Statement Regarding the Hearing on Defendant-Intervenors' Motion for Stay Pending Appeal was served on all counsel of record via the Court's CM/ECF system.

/s/ Bridget K. McNeil

Bridget Kennedy McNeil
U.S. Department of Justice